A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON'BLE SHRI JAGDISH BHALLA, Ag. C.J. &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH,J

Writ Appeal (PR)No. 3486 of 2007

JUDGMENT FOR CONSIDERATION

Acting Chief Justice

/07/2007

HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J. I agree

Sd/-
Dilip Raosaheb Deshmukh
Judge

POST FOR JUDGMENT : 13 /07/2007

Sd//-

Ag. Chief Justice
13 /07/2007

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Writ Appeal (PR)No. 3486 of 2007

APPELLANT (RESPONDENT No.2)		Chhattisgarh Chemical Mill Mazdoor Sangh, Labour Camp Jamul, District Durg, C.G.
	Versus	
RESPONDENTS (PETITIONER NO.1)	1.	Director Keystone Industries Ltd. Plot No. 18-26, Industrial Area, Nandini Road, Bhilai, District Durg (C.G.)
PETITIONER NO.2	2.	Vishnu Chemicals Pvt. Ltd. Plot No. 18-26, Industrial Area, Nandini Road, Bhilai, District Durg (C.G.)
RESPONDENT No. 2	3.	Labour Court Constituted under the Industrial Disputes Act, Durg (C.G.)

Writ appeal under Section 2(1) of The Chhattisgarh High Court Appeal to Division Bench Act, 2006

Present : Ms. Sudha Bhardwaj, counsel for the appellant.
Shri Indrasen Sahu, counsel for the respondents.

JUDGMENT

(Delivered on 13th July, 2007)

Per Hon'ble Shri Jagdish Bhalla, Ag. CJ.

This writ appeal is directed against the order dated 06-02-2007 passed by learned Single Judge in Writ Petition No. 4052/2004 whereby the writ petition was allowed and the award dated 06-08-2004 pronounced by the Labour Court (constituted under the Industrial Disputes Act, 1947), Durg, (C.G.) (hereinafter referred to as "Labour Court, Durg) was set aside and four workmen represented through respondent No. 2 in the writ petition were declared to be entitled to one

month's pay in lieu of notice with compensation and encashment of un-availed portion of leave.

Proceeding before the Labour Court started when on behalf of the State Government Shri H.R. Dwivedi, Dy. Labour Commissioner, Chhattisgarh Area, Raipur referred the following industrial dispute to the Labour Court under Section 10 of the Industrial Disputes Act 1947 (Act 14 of 1947).

> "क्या श्री उदेश्याम एवं अन्य –3 (सूची संलग्न) को सेवा पृथ्थकीकरण वैध एवं उचित है? यदि नही तो वे किस सहायता के पात्र हैं एवं इस संबंध में नियोजक को क्या निर्देश दिये जाने चाहिए?"

The Labour Court on 06-08-2004 gave an award in favour of four workmen. Aggrieved by the said award, Director, Keystone Industries Ltd. and Vishnu Chemicals Pvt. Ltd. filed writ petition No. 4052/2004, while filing the writ petition the same was titled as *'writ under Articles 226/227 of the Constitution of India for issuance of a suitable writ, orders or direction'*.

The following reliefs were sought for in paragraphs 7 of the writ petition:-

> "7.1 That this Hon'ble Court may be pleased to call for the entire records.
>
> 7.2 That this Hon'ble Court may kindly be pleased to set aside the award dated 06-08-2004 passed by respondent no.1 in case no. 15/ID Act/Reference/1999.
>
> 7.3 Any other relief, which Hon'ble court deems fit and proper of the case, may be allowed.

7.4 Cost of the petition may also be given."

Before coming in to force of The Chhattisgarh High Court (Appeal to Division Bench) Acts, 2006, the intra court appeals were being filed under the provisions of Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Sampati) Adhiniyam 1981 (hereinafter referred to "Adhiniyam"). The said provisions of Letters patent Appeals was repealed by the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (No.1 of 2007) and by the same notification Chhattisgarh High Court Rules, 2005 came into force wherein the provision of appeal is provided under Rule 2 which is as follows:-

> "2. Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction:- (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original Jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court :
>
> Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article227 of the Constitution of India.
>
> (2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge.
>
> Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.

Explanation:- The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining the prescribed period may by sufficient cause within the meaning of this sub-section."

From the perusal of aforesaid provision it cannot be a matter of doubt that no appeal shall lie against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Filing of appeal is a matter of substantive right and it is well-known that by said right one can approach the superior Court invoking its aid and interposition to redress an error of the Court below. The basic idea behind filing of an appeal revolves round the right as contra-distinguished from the procedure laid down therefor. In Messrs. Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and others, AIR 1953 SC 221, it has been opined by the Apex Court as under :

"11. The above decisions quite firmly establish and our decisions in Janardan Reddy vs. The State and in Ganpat Rai vs. Agarwal Chamber of Commerce Ltd., uphold the principle that a right of appeal is not merely a matter of procedure. It is matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court."

In the backdrop of what has been referred hereinabove, the learned counsel for the appellant was called upon to address the Court

whether the writ appeal arising out of the order passed in the writ petition filed under Articles 226/227 of the Constitution of India is maintainable? Learned counsel for the appellant Ms. Sudha Bhardwaj emphatically submitted that writ petition was filed under Articles 226/227 of the Constitution of India, therefore it attracts the original jurisdiction conferred upon the High Court by the Constitution of India. Accordingly, writ appeal under Section 2(1) of the Chhattisgarh High Court Appeal to Division Bench Act, 2006 is maintainable and the right of appeal cannot be taken away from the appellant and any such attempt would amount to adversely affecting the substantive right of the appellant for having at least one stage of appeal. In support of her argument she relied upon the decision of the Supreme Court in the matter of **Umaji Keshao Meshram and others Vs. Smt. Radhikabai and another, AIR 1986 Supreme Court 1272** wherein the following view has been taken by the Apex Court:-

> "Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque (1955) I SCR 1104; (AIR 1955 SC 233) before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of Courts specified in that Rule, they shall be heard and finally disposed of by a single Judge. The question is whether an appeal would lie from the decision of the single Judge in such a case. In our opinion, where the facts justify a

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> party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application is being made under Article 226, and if in deciding the matter, in the final order, the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in Aidal Singh v. Karan Singh, AIR 1957 All 414 (FB) and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass, AIR 1959 Punj 291 and Barham Dutt v. Peoples' Co-operative Transport Society Ltd., New Delhi, AIR 1961 Punj 24 and we are in agreement with it."

It is further contended that under such circumstances the appellant cannot be deprived of his valuable right of appeal and the writ petition filed before learned Single Judge ought to be treated under Article 226 of the Constitution of India.

Learned counsel for the appellant has attempted to explain that writ petition was filed on the original jurisdiction under Article 226 of the Constitution of India seeking setting aside of the award passed by the Labour Court and Article 227 was added in the petition filed for superintendence conferred upon the High Court by Article 227 of the Constitution.

We are of the considered opinion that the powers conferred by Article 226 are different in spirit from the powers conferred by Article 227 of the Constitution and they operate in different fields. It may be that the same goal can be achieved by the appellant by filing a writ petition under two different provisions of the Constitution. Under Article 226 an order, direction or prerogative writ has to be issued to the State, Authority or a person and in such proceedings the State, Authority or person against whom the relief is being sought is a necessary party. The proceedings under Article 226 of the Constitution of India are the original proceedings however, the nuclear point is that whether it originated first time in the High Court under Article 226 only. However, under Article 227 the petitioner would come before this Court after being aggrieved by an order or judgment of the subordinate Court or Tribunal for the purpose of ascertaining whether in giving such judgment or order the subordinate Court or the Tribunal concerned has acted within the Authority of Law. We are of the opinion that the Labour Court is not merely a departmental Tribunal composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. In fact the Labour Court and Industrial Tribunals have been constituted as a substitute for the High Court under Article 323-A of the Constitution, still the High Court exercises supervisory jurisdiction under Article 227 of the Constitution. In the matter of **Krishan Prasad Gupta Vs. Controller, Printing & Stationery (1996)**

1 SCC 69 it has been held by the Apex Court that under Article 227 of the Constitution of India the High Court has supervisory jurisdiction of the Labour Courts and Industrial Tribunals constituted under Article 323-A of the Constitution. The right of appeal is always statutory one which originates from the statute. In the case in hand the petitioners had challenged the award of the Labour Court before learned Single Judge with certain prayers which have already been referred to hereinabove.

Now we proceed to examine the reliefs claimed by the writ petitioners and the reliefs granted to them by learned Single Judge in the writ petition in question. We find that the award of the Labour Court has been prayed to be set aside. We further find that reference of 1999 on the basis of which the proceedings before the Labour Court started is not under challenge. We further find that the petitioners had not prayed for issuance of any writ in the said petition. However, on the other hand the petitioners had prayed for setting aside of the award dated 06-08-2004 passed by the Labour Court. Learned Single Judge while deciding the writ petition has not issued any direction which could be said to be under the original jurisdiction i.e. under Article 226 of the Constitution of India. We find that neither the vires of any Act nor the reference order of the State Government were under challenge in the writ petition and admittedly the controversy involved between the parties does not originate in the High Court.

It has already been referred to hereinabove that the controversy does not originate before the High Court. Thus from the appreciation of the above discussion it can be said that no writ appeal is maintainable in cases where the controversy does not originate before the High Court. The Rule is based on the logic that Labour Court is acting as Tribunal having already analytically examined the matter and tested it in the background of the law laid down. In such circumstances in order to get finality the decision of learned Single Judge be taken as final and as such the writ appeal is not maintainable.

In premise, the writ appeal is dismissed as not maintainable.

Acting Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge